

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

AARON GRUBBS,

Plaintiff,

v.

CITY OF EUFAULA, ALABAMA,

Defendant.

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Case Number 2:05-cv-604

FIRST AMENDED ANSWER

Defendant the City of Eufaula, Alabama, answers the Plaintiff's complaint as follows.

I. INTRODUCTION

1. Denied.

II. JURISDICTION AND VENUE

2. The defendants admit the Court has subject matter jurisdiction over this action. All other allegations are denied.

3. The defendants admit venue for this action is proper in the United States District Court for the Middle District of Alabama, Northern Division. All other allegations are denied.

III. STATEMENT OF ALLEGATIONS

4. The Defendant admits the Plaintiff is a black male and lives in Barbour County, Alabama. The Defendant admits the Plaintiff is a resident of the Middle District of Alabama. The Defendant admits the Plaintiff is over the age of nineteen. All other allegations are denied.

5. The Defendant admits the Plaintiff is a certified police officer and applied for a job at the Eufaula Police Department. The Defendant denies the Plaintiff's police officer certification is valid because it was obtained by fraud. The Defendant further denies that the Plaintiff filed his application in November 2004.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

IV. THERE IS NO SECTION IV

10. There is no Paragraph 10.

V. CLAIMS FOR RELIEF

11. Denied.

12. Denied.

13. Denied.

14. Denied.

FIRST DEFENSE

To the extent the Plaintiff failed to mitigate his alleged damages, if any, the Defendant is entitled to an offset for any amount he earned or could have earned.

SECOND DEFENSE

The Defendant acted with just cause at all times.

THIRD DEFENSE

The Defendant acted reasonably at all times.

FOURTH DEFENSE

The Defendant pleads qualified immunity as a defense.

FIFTH DEFENSE

The Defendant pleads immunity as a defense.

SIXTH DEFENSE

The Defendant pleads that it had a legitimate, non-discriminatory reason for its actions.

SEVENTH DEFENSE

The Defendant pleads judicial estoppel as a defense.

EIGHTH DEFENSE

The Defendant pleads collateral estoppel as a defense.

NINTH DEFENSE

The Defendant pleads equitable estoppel as a defense.

TENTH DEFENSE

The Defendant pleads estoppel as a defense.

ELEVENTH DEFENSE

The Defendant pleads fraud as a defense.

TWELFTH DEFENSE

The Defendant pleads good faith.

THIRTEENTH DEFENSE

The Plaintiff was not qualified for the position sought because he falsified two police academy applications.

FOURTEENTH DEFENSE

The Plaintiff was not qualified for the position sought because he has an extensive criminal record.

FIFTEENTH DEFENSE

The Plaintiff was not qualified for the position sought because he omitted information from his job application.

SIXTEENTH DEFENSE

The Plaintiff's damages claim is limited by misconduct that independently would have resulted in his termination. He falsified two police academy applications. See McKennon v. Nashville Banner Publ'g Co., 513 U.S. 352 (1995).

NOTICE OF INTENTION TO PURSUE ATTORNEYS' FEES

Defendant asserts that this action is groundless, frivolous, unreasonable, and/or without foundation and brought in bad faith. Defendant intends to pursue attorney's fees against the Plaintiff.

/s/ James H. Pike

James H. Pike (PIK003)
Attorney for Defendant
The City of Eufaula, Alabama

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, James H. Pike, certify that on November 22, 2005, I electronically served a copy of the foregoing document on:

Malcolm R. Newman
P.O. Box 6137
Dothan, AL 36302-6137

/s/ James H. Pike
James H. Pike